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CHARLES ELMORE CROPLEY
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Supreme Court of the United States

OCTOBER TERM, 1940

No. 936

WILLIAM DAVIES CO., INC.,

Petitioner,

VS.

THE PEOPLE OF THE STATE OF ILLINOIS, EX REL. JOHN L. TOMAN, County Treasurer and Ex-Officio County Collector of Cook County, Illinois,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

Petition for Writ of Certiorari

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TO THE HONORABLE, THE JUSTICES OF SAID COURT:

Your petitioner presents this, its petition, to this court for a writ of certiorari to the Supreme Court of Illinois, and in support thereof shows:

1. That this petition arises out of an application made by John Toman, County Collector of Cook County, Illinois, as *ex officio* County Collector, in the name of The People of the State of Illinois, to obtain a judgment of sale of real estate for the non-payment of taxes claimed

to have been levied by various taxing bodies for the year 1937.

Petitioner appeared and filed objections to certain of said levies including some of the levies of the city of Chicago.

The corporate fund levy as attempted to be made by said city was for the flat sum of $37,000,000 and required a rate of 1.784012 per centum applied to the assessed valuation of $2,073,976,391 to produce it.

Petitioner objected to so much of the $37,000,000 as was represented by the rate employed in excess of 1.29 per centum.

Prior to 1935 when one of the acts in question was passed, the statute pertaining to municipal levies provided that cities and villages of 150,000 and more population might levy 1.29 per centum, but that cities and villages having a population of less than 150,000 could levy only two-thirds of one per centum.

In 1935, the legislature passed an act leaving the rate of taxation for cities and villages having a population of less than 150,000 as it theretofore stood, at two-thirds of one per centum, but giving cities and villages having a population of 150,000 or more, the right to levy a rate of 1.29 per centum or $31,925,000 for 1934, whichever might be the greater, $36,000,000 for 1935, and $37,000,000 for 1936 and every year thereafter.

2. That November 8th, 1904, The People of the State of Illinois adopted an amendment to the Constitution known as Section 34 of Article IV.

Said section, with the more pertinent provisions italicized by petitioner, is as follows:

> "Sec. 34. *The General Assembly shall have power, subject to the conditions and limitations hereinafter contained to pass any law (local, special or general) providing a scheme or charter of local municipal*

government for the territory now or hereafter embraced within the limits of the city of Chicago. The law or laws so passed may provide for consolidating (in whole or in part) in the municipal government of the city of Chicago, the powers now vested in the city, board of education, township, park and other local governments and authorities having jurisdiction confined to or within said territory, or any part thereof, and for the assumption by the city of Chicago of the debts and liabilities (in whole or in part) of the governments or corporate authorities whose functions within its territory shall be vested in said city of Chicago, and may authorize said city, in the event of its becoming liable for the indebtedness of two or more of the existing municipal corporations lying wholly within said city of Chicago, to become indebted to an amount (including its existing indebtedness and the indebtedness of all municipal corporations lying wholly within the limits of said city, and said city's proportionate share of the indebtedness of said county and sanitary district which share shall be determined in such manner as the General Assembly shall prescribe: in the aggregate not exceeding five per centum of the full value of the taxable property within its limits, as ascertained by the last assessment either for State or municipal purposes previous to the incurring of such indebtedness, (but no new bonded indebtedness, other than for refunding purposes, shall be incurred until the proposition therefor shall be consented to by a majority of the legal voters of said city voting on the question at any election, general, municipal or special: *and may provide for the assessment of property and the levy and collection of taxes within said city for corporate purposes in accordance with the principles of equality and uniformity prescribed by this Constitution;* and may abolish all offices, the functions of which shall be otherwise provided for; and may provide for the annexation of territory to or disconnection of territory from said city of Chicago by the consent of a majority of the legal voters

(voting on the question at any election, general, municipal or special) of the said city and of a majority of the voters of such territory, voting on the question at any election, general, municipal or special; and in case the General Assembly shall create municipal courts in the city of Chicago it may abolish the offices of Justices of the Peace, Police Magistrates and Constables in and for the territory within said city, and may limit the jurisdiction of Justices of the Peace in the territory of said county of Cook outside of said city to that territory, and in such case the jurisdiction and practice of said municipal courts shall be such as the General Assembly shall prescribe; *and the General Assembly may pass all laws which it may deem requisite to effectually provide a complete system of local municipal government in and for the city of Chicago.*

No law based upon this amendment to the Constitution, affecting the municipal government of the city of Chicago, shall take effect until such law shall be consented to by a majority of the legal voters of said city voting on the question at any election, general, municipal or special; and no local or special law based upon this amendment affecting specially any part of the city of Chicago shall take effect until consented to by a majority of the legal voters of such part of said city voting on the question at any election, general, municipal or special. Nothing in this section contained shall be construed to repeal, amend or affect section four (4) of Article XI of the Constitution of this State."

3. That the claimed authority for the levy by the city of Chicago for corporate purposes of an amount in excess of 1.29 per centum in substance, is:

Section 1 of Article VIII, Chapter 24 of the Illinois Statutes (Bar Association Statutes 1935, Par. 115, p. 359), the pertinent provisions of which are as follows:

"The city council in cities and board of trustees in villages may levy and collect taxes for corporate purposes in the manner following: * * *

provided, the aggregate amount of taxes so levied for any one year, exclusive of the amount levied for the payment of bonded indebtedness or interest thereon, and exclusive of taxes levied for the payment of judgments (for which a special tax shall have been authorized by law) and for the purposes of pension funds, working cash fund, public library and municipal tuberculosis sanitarium, in cities and villages of 150,000 or more population according to the last National or State census, for the year 1934 shall not exceed the rate of one and twenty-nine hundredths (1.29) per centum or the rate that will produce, when extended, the sum of thirty-one million nine hundred and twenty-five thousand dollars ($31,925,000.00) whichever may be the greater; and for the year 1935 shall not exceed the rate of one and twenty-nine hundredths (1.29) per centum or the rate that will produce, when extended, the sum of thirty-six million dollars ($36,000,000.00), whichever may be the greater; and for the year 1936, and every year thereafter, shall not exceed the rate of one and twenty-nine hundredths (1.29) per centum or the rate that will produce, when extended, the sum of thirty-seven million dollars ($37,000,000.00), whichever may be the greater, and in such cities and villages of 150,000 or more population the aggregate amount of taxes so levied for any one year for general corporate purposes or any other purpose or purposes, except amounts levied for the payment of bonded indebtedness or interest thereon and except taxes levied for the payment of judgments (for which a special tax shall have been authorized by law) and for pension funds and working cash fund purposes, shall be subject to the further limitation that it shall not exceed the estimated amount of taxes to be levied for such year for such purpose or purposes as determined in accordance with the provisions of section 2a of Article VII of this Act and set forth in the annual appropriation bill of such city or village, and the aggregate amount of taxes so levied for any one year, exclusive of the amount

levied for the payment of bonded indebtedness or interest thereon and exclusive of taxes authorized by Acts which by their terms provide that such taxes shall be in addition to taxes for general purposes authorized under this section shall not exceed the rate of two-thirds (⅔) of one per centum in cities and villages of less than 150,000 population according to the last National or State census, upon the aggregate valuation of all property within such city or village subject to taxation therein, * * *

The tax rates herein authorized for cities and villages having a population of 150,000 or more for the years (1934) and (1935) shall be retrospective in their operation; and further to make such rate for the year (1934) fully effective, if the city council or board of trustees, as the case may be, of any such city or village legally made appropriations in the year (1934) for the corporate purpose of such city or village during said year, and if such corporate authorities of any such city or village, also in the year (1934), in accordance with the provisions of this section, passed an ordinance, based upon such appropriations, in and by which ordinance they levied and attempted to levy taxes for the amounts of such appropriations as they deemed it necessary to collect from the tax levy of said year, the aggregate amount of which taxes so levied and attempted to be levied for general corporate purposes exceeds the aggregate amount of taxes which such corporate authorities were, at the time of such levy and attempted levy, authorized by law to levy for general corporate purposes, then the city council or board of trustees, as the case may be, of such city or village is hereby specifically empowered to levy an additional tax or taxes for said year (1934) upon all the taxable property of such city or village, for the general corporate purposes thereof as set forth in said prior tax levy ordinance to the extent that any amount or amounts, or any part thereof, therein set forth and thereby attempted to be levied for lawful purposes exceeds in the aggregate the aggregate amount of taxes which such corporate au-

thorities were, at the time of the passage of said prior tax levy ordinance, authorized by law to levy for such general corporate purposes; provided, that the aggregate amount of such additional tax or taxes and of the taxes theretofore levied for said year, exclusive of amounts levied for the payment of bonded indebtedness or interest thereon and exclusive of taxes levied (for the payment of judgments entered prior to the first day of January, 1930, and) for pension funds, (working cash fund), public library and municipal tuberculosis sanitarium purposes, shall not exceed the maximum amount of tax herein authorized to be levied for said year.

In order to make fully effective the tax rate herein authorized for the year (1935) for cities and villages having a population of 150,000 or more, the city council or board of trustees, as the case may be, of any such city or village, is hereby authorized and empowered to levy any supplemental or additional tax or taxes, the amount or amounts of which when added to the aggregate amount theretofore lawfully levied for all corporate purposes, * * * shall not exceed the maximum amount of tax herein authorized to be levied for the year 1935. Said tax for the year 1935 may be appropriated at any time during the year 1935 notwithstanding the annual appropriation ordinance and the annual tax levy ordinance of such city or village may have been passed prior to the date when this Act takes effect. * * *

It shall not be necessary for the corporate authorities of such city or village to make any further or other appropriations as a basis for any additional tax levies for the years 1934 and 1935 nor to specify in detail the objects or purposes for which any additional tax or taxes herein authorized for each of the years 1934 and 1935 are levied, but such tax or taxes may be levied under the style and description of taxes for the general corporate purposes of such city or village of the year 1934 or

1935, as the case may be, for which taxes shall not heretofore have been levied. * * *

The supplemental or additional taxes herein authorized for the years 1934 and 1935, or either of them, may be levied at any time subsequent to the first day of July, 1935, and prior to the first day of September, 1935, and upon the filing in the office of the County Clerk of a duly certified copy of any ordinance or ordinances levying any such supplemental or additional tax or taxes, it shall be the duty of said official to extend such supplemental or additional taxes upon the book or books of the Collector of state and county taxes within such city or village in the manner herein provided for such extension of city and village taxes";

That said act will herein be referred to as the tax levy act.

That no city or village other than Chicago will have a population of 200,000 within the next twenty-five years (Tr. of Rec., p. 8).

4. That in 1939, the legislature passed an act amending the 1935 act above referred to purporting to change the population figure of 150,000 used for classification purposes, to 500,000 population, from which it results that if the legislature had power to pass said act in 1935 and amend it in 1939, no city may now levy a tax of $37,000,000 for corporate purposes, unless it has a population of 500,000 or more, (Illinois Revised Statutes, State Bar Edition, 1939, Section 1, Article VIII, Chapter 24, page 405); that in view of the fact that no municipality in Illinois except Chicago has over 105,000 population (Tr. 7) as compared with the present day population of 3,390,000 in Chicago, the effect of the increase from 150,000 to 500,000 is, in all human probability, to perpetually bar all other cities from the classification, even if such classification were permissible.

Said 1939 amendatory act also eliminated the alterna-

tive levy of 1.29 per centum or $37,000,000, which ever may be the greater, and provided also that cities and villages having a population of more than 500,000 might levy at a rate that will produce, when extended, the sum of $37,000,000.

Said act also omitted all reference to the additional levies for 1934 and 1935 provided for in the original 1935 act.

Said amendatory act also added a new provision authorizing the levy of taxes for the current year and annually thereafter for poor relief, at a rate which, when extended, will produce not to exceed $6,000,000.

5. That said acts and each of them in fact and in truth by virtue of the description embodied therein, designate the city of Chicago as the only city that ever could or ever can avail of the provisions of the acts, and consequently the city of Chicago alone is designated in the acts as clearly and indelibly by description as if its name were therein written.

That aside from the tax levy act the three other acts here involved all pertain to the levy of a tax for pension purposes, and relate to:

(*a*) A Municipal court and law department pension fund. (Par. 19, Ch. 37.)

(*b*) A Library and Retirement Board pension fund. (Par. 1108, Ch. 24, p. 720.)

(*c*) A Board of Election Commissioners pension fund. (Par. 496, Ch. 46, p. 1520.)

(All references are to State Bar Association Edition, 1939 Statutes.)

That in each of the three instances last aforesaid, the act is limited to cities and villages having a population of 200,000 or more inhabitants.

6. That if the acts in question do not come within

the purview of Section 34 of Article IV they are special and local laws and as such violate Section 22 of Article IV of the state constitution.

7. The acts here involved were not nor were any or either of them submitted to a referendum vote, hence were not approved by a majority of the legal voters of Chicago. (Tr. 8.)

8. By petitioner's objections, it was urged that the three certain pension acts purporting to grant power in each instance to cities and villages having a population of 200,000 or more, to levy taxes to pay pensions to the several groups of municipal corporations, mentioned in said acts, were in each instance void because not submitted to, or approved by, a referendum vote.

The city of Chicago, according to the last Federal Census had a population of approximately 3,390,000.

9. That none of the pretended classifications embodied in the four acts here involved are based upon necessity and in no instance does the basis of classification bear any true relationship to the objects sought to be attained by the several acts; that said pretended classifications and each of them are unreasonable, arbitrary and capricious; that a city having a population of 150,000 inhabitants has need for only about one-twentieth of the annual tax levies for corporate purposes that is needed by the city of Chicago, which has a population of about 3,390,000 inhabitants, but said tax levy act gives to both the hypothetical city of 150,000 inhabitants and the city of Chicago the power to levy and collect taxes amounting to $37,000,000 annually; that assuming, as it seems reasonable to do, that the ratio of assessed valuation to population is approximately the same in the case of a city of 150,000 population and one of 3,390,000 population, then if it takes a rate of 1.784012 per centum applied to the assessed valuation of $2,078,-

000,000 to produce $37,000,000 in taxes, then the hypothetical city of 150,000 would have an assessed valuation of less than $100,000,000, which last mentioned figure would in turn require a rate of thirty-seven per centum to produce the $37,000,000 tax which the tax levy act empowers it to levy and collect; that this last mentioned rate would more than eat up all of the assessed valuation of such hypothetical city having a population of 150,000 in less than three years.

That a city of 149,900 population would ordinarily have property of practically the same assessed valuation as the one having a population of 150,000, but under the tax levy act involved herein, it could employ a tax rate of two-thirds of one per cent which, applied to the valuation of $100,000,000, would produce a tax of $666,-666, as compared with the $37,000,000 tax which the tax levy act permits the city with 150,000 to levy; that if the hypothetical city of 150,000 population were accorded by the act in question a tax rate of 1.29 per centum instead of the lump sum levy of $37,000,000, it could levy and collect annually on the basis of the $100,-000,000 valuation $1,290,000 as compared to the $37,000,-000 which the act permits it to levy and collect.

That it may well be that if the tax rate act were confined to the city of Chicago and it alone (which the opinion under consideration says it is not) and if it were to be approved by a majority of the legal voters in the city of Chicago, it would, by force of Section 34 of Article 4, be effective, but such approval is lacking.

10. Petitioner alleges that this Court has jurisdiction to grant the certiorari here prayed for, pursuant to Section 8 of the Judicial Code, (Session Laws, 1925, page 940) and presents unto the Court as reasons therefor and assigns as error committed by the Illinois Supreme Court, and as grounds for the issuance of such

writ and the reversal of the judgment of the Supreme Court of Illinois and that of the County Court of Cook County, the following:

(1) Each of the four acts involved in the proceedings here presented and the tax levies attempted to be made pursuant thereto are in violation of Section 1 of the Fourteenth Amendment to the Federal Constitution of the United States in that they do not constitute due process of law for the following reasons, among others:

(*a*) None of said acts embody a provision requiring that it be submitted to a referendum vote of the legal voters of the city of Chicago before it should take effect in said city as is required by Section 34 of Article 4 of the Constitution of Illinois.

(*b*) None of said acts was in fact submitted to a referendum vote of the legal voters of the city of Chicago.

(*c*) None of said acts was approved by a majority of the legal voters of the city of Chicago and therefore did not nor did any or either of them take effect in the city of Chicago, in consequence of which each and all of the tax levies here involved are without authority of law and are without due process of law, in violation of Section 1 of the Fourteenth Amendment to the Federal Constitution.

(2) The classifications embodied in said four acts and each of them are unreasonable, arbitrary and capricious and the basis employed in each of them has no just relationship in any instance to the purposes to which it is pretended that they apply, and they are, and each of them is, therefore, lacking in due process of law, and are in violation of Section 1 of the Fourteenth Amendment to the Federal Constitution.

(3) That the Constitution of Illinois by Section 34 of Article 4 segregates the city of Chicago from all other cities and villages and puts it into a position or class by itself for the enactment of all laws pertaining to local municipal government, and thereby precluded the General Assembly from making any classification involving the city of Chicago, or passing any act empowering the city of Chicago to levy taxes for corporate purposes unless said act complies with the provisions of said Section 34, thereby rendering said act void and not due process of law, as required by Section 1 of the Fourteenth Amendment to the Federal Constitution.

(4) None of said acts has any application to any city or village in the State of Illinois, except the city of Chicago, and unless said acts are held to apply to the city of Chicago only, each of them is local and special, in violation of Section 22 of Article 4 of the Constitution of Illinois, and each is consequently void and of no effect and lacking in due process of law, contrary to Section 1 of the Fourteenth Amendment to the Federal Constitution.

(5) The so-called tax levy act here involved forever precludes any municipality, other than the city of Chicago from availing thereof, so far as the levies for 1934 and 1935 are concerned, except within a period of two months following the first day of July, 1935, when the population of all cities and villages, aside from the city of Chicago, was such as to render it absolutely impossible for any city or village to attain a population of 150,000 within said time in order to enable it to come within the classification of 150,000 population, by reason of which said act is unreasonable and void and does not constitute due process of law.

(6) The General Assembly of the State of Illinois in 1939, amended said tax levy act so as to preclude from entry into the class any city or village having a population of less than 500,000, thereby rendering it impossible, based on past experience in the increase in population in municipalities in the State of Illinois, for any municipality to ever attain the population required for membership in said class, in consequence of which said act is special and local and in violation of Section 22 of Article 4 aforesaid, and does not constitute due process of law, and violates Section 1 of the Fourteenth Amendment of the Federal Constitution, unless said act is held to apply to the city of Chicago alone, in which case it is not effective because it has not been approved by a majority of the legal voters of the city of Chicago.

(7) The ostensible purpose sought to be attained by said tax levy act is to enable a city or village in the State of Illinois to levy an annual tax for corporate purposes of $37,000,000. The fact that the General Assembly regarded $37,000,000 as an abundant annual revenue for corporate purposes for the city of Chicago, which has a population of over 3,000,000, shows conclusively that said $37,000,000 is approximately twenty times as great as is needed for a city or village having a population of 150,000; that if it requires a tax rate of 1.784012 per centum to produce $37,000,000 in Chicago, it would require a tax rate of approximately thirty-seven per centum to produce said sum in taxes in the hypothetical city or village of 150,000 population; that said tax levy act is unreasonable, arbitrary, confiscatory, and is void, and is not founded on necessity and does not constitute due process of law.

(8) There is no necessity for the classification embodied in any of the acts here involved, thereby ren-

dering said classification in each instance unreasonable, arbitrary and void, and they do not nor do any or either of them constitute due process of law.

(9) That Section 34 of Article 4 of the Constitution of Illinois provides that the General Assembly shall have authority to pass a law providing for a system of local municipal government for the city of Chicago, and specifies the subject of taxation as one of the elements or powers of such local municipal government. Said section also provides that no law so enacted by the legislature shall take effect in the city of Chicago, whether it be special, local or general, until it is approved by a referendum vote, and none of said acts was submitted to a referendum vote, thereby rendering each and all of said tax levies without due process in violation of Section 1 of the Fourteenth Amendment to the Federal Constitution.

(10) None of the acts in question provided for their submission to a referendum. No referendum was had and none of the acts were approved. They are, therefore, not in effect in the city of Chicago and do not constitute the basis of the levy of the taxes here involved. Said tax levies are therefore without due process of law and in violation of the Fourteenth Amendment to the Federal Constitution, and are void.

(11) By the enactment of the several acts and each of them here involved, without a provision therein contained requiring a referendum, the General Assembly attempted to evade the provisions of Section 34 of Article 4 of the Constitution of Illinois, and to violate the provisions of the Fourteenth Amendment requiring due process of law, and to deceive the people and the courts into the belief that said acts and each of them were legitimate classifications, when in fact and in law they were and are mere pretenses used

by the General Assembly for the purpose aforesaid. Said acts, and each of them, are, therefore, void and violate Section 1 of the Fourteenth Amendment to the Federal Constitution.

(12) The opinion of the Supreme Court of Illinois, is evasive, arbitrary and capricious, by reason of which this Court is compelled to form its own conclusions concerning the Illinois Constitution and statutes, independently of the opinion of said State Supreme Court.

(13) That the meaning and validity of the acts here involved must be determined not by their form, or what they purport to be or do, but by their effect or what they in fact do.

(14) It was error for the State Court to refrain from passing upon the Federal constitutional question presented, and its failure in that regard leaves it to this Court to pass initially upon said question, together with all collateral questions relative thereto.

11. The pivotal question for decision is, Is the levy and collection of taxes as provided by said acts here involved and each of them a function or power of local municipal government as the term, "local municipal government" is employed in Section 34 of Article 4 of the Constitution of the State of Illinois, thereby requiring that said acts and each of them be approved by a majority of the legal voters of the city of Chicago before they take effect in the city of Chicago; that this question is not specifically ruled on by the opinion of the State Supreme Court but is determined in *City* v. *Reeves,* 220 Ill. 274, at 304, to which petitioner respectfully invites the attention of this Court.

12. That the Supreme Court of Illinois, in *City* v. *Reeves,* 220 Ill. 274, in its initial opinion concerning Sec-

tion 34 of Article 4, among other things, said that said section provides that:

(P. 282)

"the General Assembly shall have power, subject to the conditions and limitations therein contained, (1) to pass any law, local, special or general, providing a scheme or charter of local municipal government for the territory now or hereafter embraced within the limits of the city of Chicago; * * * (3) and may provide for the assessment of property and for the levy and collection of taxes for corporate purposes in accordance with the principles of equity and uniformity prescribed by this constitution, * * * (7) may pass all laws requisite to effectually provide a complete system of local municipal government in and for the city of Chicago, * * * (8) provides for a referendum."

(P. 298)

"It is clear that the amendment of 1904 embraces but one subject, *viz.*, the establishment of local municipal government in the city of Chicago, and as the amendment was designed to confer legislative power upon the General Assembly to establish local municipal government in the city of Chicago, we think the amendment was properly proposed to article 4. * * *"

(P. 302)

"It would seem equally clear that the obtaining of revenue with which to pay the indebtedness of the city and with which to maintain a local municipal government in the city of Chicago was germane to the organization of such municipal government, as local municipal government in said city could not exist without revenue with which to pay its existing indebtedness and to maintain in the city local municipal government."

13. That in *Swigart* v. *City,* 223 Ill. 371, the Court, at page 374, said:

"For many years the necessity for legislation for the city of Chicago which was suited to the condi-

> tions of the people generally throughout the state has been recognized. Under our constitution prohibiting local or special laws, this necessity could not be relieved, and various methods of meeting the required needs have been resorted to by the legislature. For the purpose of simplifying the procedure and permanently relieving the situation, the legislature of 1903 submitted an amendment to the constitution and at the November election 1904, it was adopted by the people, the effect of which was to permit the legislature to pass any law, local, special or general, providing a scheme or charter of local municipal government for the city of Chicago."

14. That in *People* v. *City,* 310 Ill. 534, at page 539, it is said:

> "The amendment of the constitution (section 34 of article 4) authorized the General Assembly to pass any law, local, special or general, providing a scheme or charter of local municipal government for the city of Chicago. It recognized the municipal courts authorized to be created in the city of Chicago as a part of the local municipal government, and provided that 'no law based upon this amendment to the constitution, affecting the municipal government of the city of Chicago, shall take effect until such law shall be consented to by a majority of the legal voters of said city voting on the question at any election, general, municipal or special.' "

That at page 540, the Court mentions certain laws that have been passed and approved by a referendum vote, and then refers also to other laws which were submitted to a referendum and rejected; that reference is then made to a number of laws that were passed by the General Assembly omitting the formality of a referendum as is the case with the acts here involved.

That the Court commenting on these last mentioned laws, says:

"These acts of the General Assembly are ineffective. In passing them it assumed an authority expressly denied to it by the amendment to the constitution. The intention of the amendment is manifestly that the powers conferred by it on the General Assembly shall be exercised subject to the right of the people of the city to reject the result. The General Assembly has not the final power, but its legislation, so far as based on this amendment is subject to a veto by an adverse popular vote."

The Court, then continuing at page 541, says:

"The amendment requires both the act of the legislature and the vote of the people before any law based upon the amendment affecting the municipal government can take effect. The same act and vote must again concur before a law changing the previous one can take effect. It would be an entire perversion of the amendment, which was intended to confer on the people of Chicago control of legislation affecting their local government, if they should now learn that the whole power of such control is now in the legislature; that having once adopted an act they were without power to prevent the legislature from entirely changing their scheme of government. The necessity of the referendum if they would retain the control of local government is shown by the legislation which has been cited which has been rejected."

15. In *People* v. *Gill,* 358 Ill. 261, at page 264, the Court said:

"In passing upon the act in question, we must bear in mind that section 34 of article 4, being the constitutional amendment of 1904, empowered the legislature to pass laws establishing a local municipal government in and for the city of Chicago, and, with the consent of the voters of the city, to pass any laws it deems requisite, limited only by the restrictions imposed by such amendment. * * * *The fact* must not be overlooked at any time, in the con-

sideration of section 34 *that no law based upon a provision of that section affecting the municipal government of the city of Chicago can take effect until such law has been consented to by a majority of the legal voters of the city voting on the issue at an election duly held.*"

16. In *Ptacek* v. *Coleman,* 364 Ill. 618, the Court, at page 622, says:

> "The constitutional requirement for the consent of the legal voters does not depend upon whether the law is general or special. It is applicable to any law, general, local or special, based upon the amendment and which affects the local municipal government of the city of Chicago."

That the question involved in the last mentioned case was whether the new General Practice Act was passed after the enactment of the Municipal Court Act, which had been approved by a referendum vote, and which General Practice Act was broad enough in its terms to apply to Municipal Court practice without said General Practice Act being approved by a referendum vote, amended the Municipal Court Act without being submitted to and approved by a referendum.

17. That in *City* v. *County,* 370 Ill. 301, there was involved the liability of Cook County, to the city of Chicago for court costs in criminal cases. It was contended that inasmuch as the statute involved was required to be submitted to a referendum, it was the people voting at the referendum who made the law effective instead of the General Assembly in whom it was claimed the power to impose the liability for costs was vested. In disposing of this question, the Court, at page 305, said:

> "Whether the purpose of a statute is local or public has a bearing only upon the question of a violation of sections 9 and 10 of article 9, and has no relation to whether it was properly enacted under

> section 34 of article 4 which expressly requires a referendum. * * * The net result of section 34 of article 4 is that, so far as the municipal government of the city of Chicago is concerned, it did away with the limitation as to local and special laws, and that of uniformity, and imposed another, that of a referendum."

That the opinion in the case here presented does not pretend to repudiate anything said in any of the cases from which the quotations above set forth are made; that conversely the opinion herein cites and quotes approvingly from many of said cases.

18. That the cases from which quotations are heretofore made are not referred to by way of arguing the merits of the case, but for the purpose of showing that said opinion is not a judicial determination, but, is evasive, arbitrary and capricious.

That the italics employed herein are those of the petitioner.

19. That the opinion also says (Tr. 14):

> "The acts assailed by the appellant, are general laws, and do not purport to be based on section 34 of article 4 nor to affect only the municipal government of the city of Chicago."

That this statement is both immaterial and erroneous; immaterial because it makes no difference whether the act in question is local, special or general, it must be approved by a referendum vote before it takes effect in the city of Chicago; erroneous because the acts are both local and special as appears from matters hereinbefore set forth.

That the latter part of the opinion here involved, deals at length with the Municipal Court Act, which is in nowise involved in the case, and suggests that it is illustrative of the character of legislation requiring a refer-

endum; that the Court takes no note of the fact that the Municipal Court could not exist without taxation or that taxation, like a Municipal Court, is one of the specified subjects set forth in Section 34 of Article 4.

20. That the Court did not in its opinion give effect to the important and controlling proposition that if a general law affecting the local municipal government of the city of Chicago could become effective in Chicago without a favorable referendum vote, it would enable the General Assembly to deprive the people of Chicago of the right, conferred by Section 34 of Article 4, to reject a general law applicable to the local municipal government of the city of Chicago, and leave the legislature free, by passing general laws only, to thwart the purpose of Section 34. That the General Assembly alone could thus deprive the people of Chicago of the right to adopt or reject "any law, (local, special or general) providing a scheme or charter of local municipal government for the territory now or hereafter embraced within the limits of the city of Chicago."

21. That the opinion of the State Court reads in part (Tr. 12 and 13):

> "Section 34 of article 4 of our constitution, namely, the amendment adopted on November 8, 1904, so far as pertinent, provides that the General Assembly shall have power, subject to the conditions and limitations therein contained to pass any law, (local, special or general) providing a scheme or charter of local municipal government for the territory embraced within the limits of the city of Chicago. The law or laws so passed, the amendment also declares, may provide for the assessment of property and the levy and collection of taxes within the city for corporate purposes in accordance with the principles of equality and uniformity prescribed by the constitution. Further, the amendment provides that the legislature may pass all

laws which it may deem requisite effectually to provide a complete system of municipal government in and for Chicago. No law based upon this amendment, affecting the municipal government of the city, it is ordained, shall take effect until consented to by a majority of the legal voters of the city voting on the question at an election."

That by the language of the opinion above set forth, the Court answered, in the affirmative, the pivotal question set forth in paragraph 11 hereof, and that the court's numerous prior decisions hereinbefore referred to and the plain language of the constitution itself render said question susceptible of no other answer being made.

22. That said opinion further reads (Tr. 13):

"It is true, as appellant urges, that no law based upon section 34 of article 4, affecting the municipal government of Chicago can take effect until such law has been consented to by a majority of the legal voters of the city voting on the issue at an election duly held. (*People* v. *Gill*, 358 Ill. 261; *People* v. *City of Chicago*, 310 *id.* 534.) Similarly, it is established that the constitutional requirement for the consent of the legal voters does not depend on whether the law is general or special. (*Ptacek* v. *Coleman*, 364 Ill. 618; *People* v. *City of Chicago*, *supra.*) As we recently observed in *city of Chicago* v. *County of Cook*, 370 Ill. 301: 'The net result of section 34 of article 4 is that, so far as the municipal government of the city of Chicago is concerned, it did away with the limitation as to local or special laws, and that of uniformity, and imposed another, that of a referendum.'"

That had the opinion stopped with the language hereinbefore quoted and then stated the necessary and inevitable conclusion to be deduced therefrom, the Court would have been impelled to the conclusion that inasmuch as none of the four laws in question had been

submitted to a referendum, none of them were in effect in the city of Chicago, and that the levies in question were without authority and void, and that the objections filed in the County Court, raising the questions herein presented should be sustained. That the Court was however not content with the conclusion that necessarily followed as aforesaid, and proceeded to raise a question not in the case and not raised by appellant and says, "The authorities invoked do not hold, as appellant urges, that *every general law which may be applicable to the city of Chicago,* in common with all cities or cities and villages of a specified population is ineffective as to the city of Chicago unless approved by its legal voters."

That appellant has not urged and does not urge the ridiculous proposition which the opinion charges it with making; that Section 34 does not deal with *every general law* but only with those pertaining to the local municipal government of the city of Chicago, and petitioner alleges and urges that *every general law pertaining to the local municipal government of the city of Chicago,* must be approved by a referendum vote before it takes effect in the city of Chicago.

23. That the opinion seems to clearly recognize as correct what petitioner above alleges when said opinion next says, "The plain unequivocal language of section 34 of article 4 prescribes that those laws based upon this amendment affecting the municipal government of the city shall take effect only when consented to by a majority of the legal voters at a regular election." (Tr. p. 13.)

That the Court then apparently oblivious to the fact that it had in the earlier part of its opinion herein, referred to the fact that Section 34 provides that a law based on it and pertaining to local municipal government "may provide for the assessment of property and the

levy and collection of taxes within the city" * * * proceeds in its opinion as follows:

"Conversely, the mere fact that an act not based on the amendment may affect the local government of Chicago does not render submission to a referendum necessary." That this last statement ignores the proposition, theretofore recognized by the opinion, that a law, general, local or special, empowering the city of Chicago to levy taxes for corporate purposes is authorized by and based upon Section 34; that in the language of the opinion (Tr. p. 12) "The law so passed, the amendment declares, may provide for the assessment of property and the levy and collection of taxes within the City for corporate purposes."

24. That the opinion then proceeds to comment, "The acts as assailed by the appellant are general laws."

That it is theretofore recognized in the opinion (Tr. p. 13) "Similarly, it is established that the constitutional requirement for the consent of the legal voters does not depend on whether the law is general or special."

That the opinion then proceeds (Tr. p. 14) "and do not *purport* to affect *only* the municipal government of the city of Chicago;" that the Court does not seem to realize that a general law cannot purport to affect only the city of Chicago but must purport to affect all cities or all of a class; that in fact and in law the laws in question are special and local as hereinbefore alleged; that it is not what a law purports to do but what it in fact does that must be considered, and this Court has many times so held.

That the opinion then says, "Manifestly, the General Assembly may enact legislation affecting the city of Chicago other than by statutes based upon section 34 of article 4;" that this statement is axiomatic, and does

not admit of dispute. That it is also axiomatic that the General Assembly *may not* enact legislation affecting *the local municipal government* of the city of Chicago except when such legislation is based on Section 34 of Article 4; that it is also true as stated in the opinion in question that no such law "shall take effect until consented to by a majority of the legal voters of the city voting on the question at an election." (Tr. 13.)

25. The opinion concludes, "We hold that the amendment of this constitution, section 34 of article 4, is not a bar to the challenged statutes, and that the General Assembly was empowered to enact them unless restrained by other provisions of the constitution. Appellant does not contend, however, that the acts are vulnerable to any other constitutional provision."

That passing for the moment the question of classification and that of whether said act must contain a provision calling for a referendum, petitioner does not challenge the conclusion, but prays this Court to take note that the question for decision is not answered by or embodied in the Court's above mentioned conclusion.

That the General Assembly might have abundant authority to pass each of the four acts and still they would not constitute due process of law upon which to base the tax levies by the city of Chicago here discussed, because none of the four acts were approved by a majority of the legal voters of the city and until so approved they do not take effect in the city and are no authority for the tax levies in question or any or either of them.

That in view of what the State Court has held in other decisions and elsewhere repeats in other parts of its opinion, it is definitely determined that the four acts in question, whether regarded as local, special or general, must be approved by a majority of the legal voters before they take effect in the city, and not having been

so approved they are not laws so far as the city of Chicago is concerned.

That petitioner contended in the State Court and now insists that the four acts here involved and each of them would be vulnerable to Section 22 of Article 4, if it were not for the fact that Section 34 of Article 4 authorizes the General Assembly to violate Section 22 of Article 4 when enacting laws for the local municipal government of the city of Chicago, and that if the acts here involved are not based upon Section 34, as so-called general laws they are inhibited by Section 22.

26. That so far as petitioner is informed the particular type of classification here involved comes before this court for the first time; that it is of a most vicious type and if permitted to stand as a precedent would open wide the door to other classifications that would in a large measure render the beneficient provisions of Section 1 of Article XIV of the Federal Constitution of no effect and eventually undermine constitutional government.

27. Petitioner respectfully shows unto the Court that it is only by the issuance by this Court of its writ of certiorari to the Supreme Court of Illinois and a decision of the questions here presented upon their merits, that petitioner's rights guaranteed to it by the constitution of the United States can be preserved.

Wherefore your petitioner prays this Court to cause to be issued its writ of certiorari directed to the Supreme Court of Illinois, commanding it to transmit to this court a transcript of its proceedings, to the end that this Court may review the same and may, upon such hearing, reverse and remand the judgment of said Court with such directions as this Court may adjudge.

WILLIAM DAVIES CO., INC.,
Petitioner,

By .....
Its Attorney.